



DRAFT BAY AREA TO CENTRAL VALLEY HIGH-SPEED TRAIN PROGRAM ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT

COMMENT SHEET

Written comments may be submitted at today's meeting or may be mailed or faxed to the Authority.

Mail: California High-Speed Train
Draft Bay Area to Central Valley EIR/EIS Comments
925 L Street
Sacramento, CA 95814

Fax: (916) 322-0827
Attn: California High-Speed Train
Draft Bay Area to Central Valley EIR/EIS Comments

Comments may also be submitted through the Authority's Web site:
<http://www.cahighspeedrail.ca.gov/>

All comments must be received by end of day September 28, 2007.

Please provide your comments below on the project's draft environmental document.

Name (please print): JOSEPH P. THOMPSON

Title (if applicable): VARIOUS

Organization/Business (if applicable): NUMEROUS

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Meeting Date: 8-29-07 Meeting Location: GILROY CITY HALL

COMMENTS:

See attached

[Signature]



U.S. Department
of Transportation
Federal Railroad
Administration



Re-submitted at Gilroy HSRA meeting 8/24/05.

JOSEPH P. THOMPSON

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September 13, 2005

JAT

FAX (916) 322-0827

Mr. Mehdi Morshed, Executive Director

High Speed Rail Authority

925 L. Street, Suite #1425

Sacramento, CA 95814

Re: **HSRA EIR & EIS---Public Comment**

Dear Mr. Morshed,

Referring to HSRA's Environmental Impact Report and Environmental Impact Statement, which were received yesterday on disk format ("EIR"), thank you for asking members of the public to comment on this vital subject. Please add these remarks to the official record of your proceedings so that history will know that you were repeatedly warned.

PHG004-1

Identity of Author. I have been in transportation for 43 years, the last 25 of which I have spent representing carriers and their customers before state and federal courts and agencies. Previously, I was graveyard shift supervisor at the intermodal facility in San Jose (1964-1970) and diversion, expediting, tracing and complaint clerk for UP in San Jose (1970-1980). I am a former member of COG's Transit Task Force. I am a member of COG's Rail Advisory Committee, SBC Safe Kids Coalition, the Legislation, Arbitration, Intermodal and Freight Claims Committees of the Transportation Lawyers Association, the Association for Transportation Law, Logistics & Policy, Conference of Freight Counsel, and a candidate for the American Society of Transportation and Logistics, and other professional organizations in our community, our State and our Nation. I am founder of Mothers Against Damned Deregulation-Transportation Union Against Regulatory Destruction of Society, San Benito County Small Business Incubator, and past-president of Gilroy-Morgan Hill Bar Assn., and Vineyard Estates Mutual Water Co., Inc. I was formerly a member of two local chambers of commerce (Gilroy and Hollister) government review councils. In 1997 I received the Best Research Paper Award from the National Board of Directors of the AST&L. I have been doing post-doctoral research of transportation law and policy at the Norman Y. Mineta International Institute for Surface Transportation Policy Studies at SJSU, and at Transportation Research Board at Georgetown University, and at the Library of Congress. My comments are merely my own, however, and not submitted on behalf of RAC, TLA, ATLLP, AST&L, CFC, or any organization to which I belong, but are only my own ideas as a student.

PHG004-2

Background. I have written and submitted many letters and papers to you, and to others, ab

**HSRA EIR: Public Comments: Recommendations for Long-Term Sustainable Transport:
Use Private Sector Solutions; Follow Adam Smith, not Karl Marx.**

out this transport subject, including the several papers that I submitted to HSRC and HSRA. I ask that those letters and papers be included in the official record of your proceedings. I am also enclosing my paper, "ISTEA Reauthorization and the National Transportation Policy," which I presented at the 68th Annual Meeting of the Association for Transportation Law, Logistics & Policy, Santa Fe, New Mexico, on June 25, 1997. It was published at 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997), and in shortened version as "ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," *Transportation Lawyer* (Dec. 1997). I am also enclosing a copy of my play "To the Pacheco Station," which I wrote while serving on Gilroy and Hollister Chambers of Commerce's Government Review Committees. When the Bullet Train was originally routed over Panoche Pass, just south of here, it was entitled "To the Panoche Station." Please include all of them in the official record of your proceedings.

PHG004-2
Cont.

Program Level Recommendations:

1. Abolish Communist Transport in America by All Modes.

See my enclosed letters and papers. I hope and pray that our HSRA's Directors will not succumb to the socialist-communist philosophy that dominated the failed USSR in the last century. If not for our sake, then for the sake of our children and grandchildren and future generations.

PHG004-3

Caveat viator!

Respectfully yours,


JOSEPH P. THOMPSON

cc: President
cc: Federal Elected Officials
cc: Governor
cc: State Elected Officials
cc: Local Elected Officials
cc: Editors
Encl. [Letters; Papers]

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January 15, 2003

FAX (916) 653-2134

Honorable R. Kirk Lindsey, Chairman

California Transportation Commission

1120 N Street, P.O. Box 942873 (MS-52)

Sacramento, CA 94273-0001

Re: Transportation Funding Crisis Workshop Jan. 17, 2003

Dear Mr. Lindsey,

Thank you for sending notice of the CTC's funding issues workshop and for inviting public comment regarding the State's fiscal "crisis." It was a pleasure meeting you at the CTC's meeting in San Jose at the Fairmont Hotel last month. Congratulations on becoming Chairman of the CTC. One cannot help but sense the irony in a trucking company CEO being CTC's chairman when our chickens are coming home to roost. At Mr. Lawrence's invitation I addressed the CTC in December 2001 at the PUC in San Francisco on the subject of intermodal transportation infrastructure improvements for the State, and although I cannot attend the workshop on the 17th of this month, I would like to offer my recommendations.

1. Author. I have 39 years experience in transportation industry (trucking and railroad). I am a post-doctoral student of transportation law and policy. I am a member of the Transportation Lawyers Association, and serve on TLA's legislation, intermodal, arbitration and freight claims committees. I am also a member of the Association for Transportation Law, Logistics & Policy, and a candidate for the American Society of Transportation & Logistics.

2. Background. For additional background, please refer to my paper that I presented to the CTC and handed to Mr. Remen at the CTC's meeting at the PUC in San Francisco, December, 2001.

3. Official Record. Will you please direct your staff to include these remarks as part of CTC's official records.

4. Summary. In response to your call for public comment on the current "funding crisis", I once again give my conclusions reached six years ago during debate on ISTEA reauthorization. *See*, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997), and "ISTEA Reauthorization and the National Transportation Policy:

***Recommendations to CTC Re:
Transportation Funding "Crisis"***

Overlooked Externalities and Forgotten Felt Necessities,” *Transportation Lawyer* (Dec. 1997). A copy of the former is enclosed for your ready review, although I previously submitted it to you in December 2001.

5. Recommendations. The CTC should first frame the fundamental issue facing it, which was identified by Transportation Secretary Mineta while he was serving as Chairman of the Surface Transportation Committee in the House of Representatives: *“The crucial question in transportation today is: What should government do and what should it leave to others?”*

Governor Davis’ call for “structural reform” should focus CTC on Secretary Mineta’s “crucial question.” The answer that CTC gives to Governor Davis and Secretary Mineta will shape the solution for our transportation “funding crisis,” and the future of transportation in California.

These issues are also pending in the 108th Congress as it takes up the subject of reauthorization legislation for Transportation Equity Act for the 21st Century (TEA-21). Please refer to my recommendations to USDOT dated 8-23-02 on this issue (see copy enclosed).

Rather than a band-aid approach to the “funding crisis,” I recommend that CTC strive to achieve “structural reform” in the basic approach that we take to the for-hire carriage of passengers. I believe that CTC should have no “sacred cows” immune from this search and rescue mission. Like waking-up with a hangover, California must swear-off its former excesses.

The Emperor Transit First is stark naked. Unremunerative fares yield insolvent carriers, of both passengers and freight. Deficits piled on top of deficits bring predictable results. Farebox recovery rates that fail to cover fully allocated costs produce a result which does not surprise transportation students or history students. Such public-sector transit systems are not “going broke” in California (or elsewhere), they were conceived insolvent, born bankrupt, and kept operating only with massive blood transfusions from the taxpayers. No member of CTC should be surprised at the present “funding crisis” because we have intentionally navigated the State to this destination, one in which California’s deficit exceeds that of all other States’ combined deficits. We asked for it; we demanded it, even if it meant damning future generations into decades of debt. Bankrupt operations, bankrupt carriers, bankrupt policies, are the result of our myopia. Increasing insolvent transit systems’ operations undermine our financial capability to build and repair transportation infrastructure. Their growing demands have reached a predictable breaking point. We must look into the mirror and recognize the problem staring back at us.

There has been occurring a world-wide “privatization revolution” as described by the *Wall Street Journal*, special edition 10-2-95, yet we have steered a contrary course of nationalization, statism, and public-ownership. Only a hypocrite would feign surprise at arriving at our present destination of fiscal “crisis.”

CTC and California must ask itself this question if it wants to be cured: “Why did Canada, Mexico, Great Britain, Australia, New Zealand, and many other nations denationalize their publicly-owned transportation industries during the past 25 years?”

We must ask ourselves, if we truly want to bring permanent relief to this and future generations of Californians: “If all of the USSR’s Five Year Plans were such raving successes, then why did the USSR collapse in revolution?”

Why should we adopt the Marx-Engels-Lenin-Trotsky-Stalin theory of government when our Founders placed its foundations on Adam Smith’s theory? Did the USSR win the Cold War, or did we win it? If we defeated the USSR, then why should we adopt their failed economic philosophy?

Answering Governor Davis’ “structural reform” challenge, answering Secretary Mineta’s “crucial question,” learning the lessons of the history of the past century, CTC and California must recognize the error of our policies, unless we have no intention of solving the “funding crisis.” Phony efforts of “reform” will just be wheel-spinning in mud—wasted motion. Genuine “reform” means going back to American free-enterprise in transportation, personal responsibility, not transit welfare. Our galley slaves, i.e., taxpayers, are beyond the breaking point. Our policies have burdened the taxpayers under unsustainable loads. Like overloaded trucks, our axles are breaking. Bankruptcies are at historic highs, both business and individual. Small business failure rates are at 80% on average during the first five years. *Traffic World*’s report that more than 10,000 trucking companies (with 20 or more trucks) either filed for bankruptcy protection or closed during the last two years illustrates what plight business owners are bearing from our ill-conceived government policies. Did you ever think you’d live to see PG&E, United Airlines, and Consolidated Freightways in bankruptcy? We are killing the goose to steal her eggs, but what will our children eat?

The fallacy in our current transport policy can be shown by comparing fares paid to move a 200 pound box with fares paid to move a 200 pound man. The shipper of the former pays 100% of his carrier’s fare; but a passenger on public-sector transit (bus or rail) pays only for the first two pounds, and the taxpayers are expected to pay for 198 pounds (applying generally accepted accounting principles, not the Enron-style accounting method our Legislature authorized for transit agencies’ financial reporting).

“Structural reform” of this unsound policy must be approached in the same manner as Great Britain accepted under the administration of Margaret Thatcher—privatization of nationalized industry. Keeping the *status quo* will only mire us further in misery. Flatboats, bullet trains, rickshaws, lunar escalators, i.e., any mode of transport, must charge user fees (fares) that are remunerative, unless we want to see it fail in the long run. Refer to my letter to HSRA’s former Chairman enclosed.

William Jennings Bryan and the Populists were wrong, just as Marx & Engels were, as government nationalization of the railroads proved during World War I.

Neither CTC nor California should be surprised by the “crisis” resulting from this fallacy (or lunacy) in our transport policy. Do we have the will power to reform our policy, or will we take the same route as did the USSR? I pray that God will give you and your fellow Commissioners the wisdom and courage to make a course correction for California now, before it is too late.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl. [Article; Letters]

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June 14, 1999

TELECOPIER: 916-323-5440

The Honorable Michael Tennenbaum, Chairman

High Speed Rail Authority

925 L Street, Suite 1425

P. O. BOX 942874, MS-74

Sacramento, CA 95814

Re: Transportation Policy & California HSR

Dear Mr. Tennenbaum,

Congratulations on your elevation to the position of Chairman of the HSRA. Please add these remarks to the next "public comment" section of your next meeting in Los Angeles on the 18th.

In response to your new route option over our local Pass east of Gilroy, I have revised *To the Panoche Station*, and now name it *To the Pacheco Station*. Apologies are still owed to the author of *To the Finland Station*, the construction estimate was revised upward to match your latest dream (or nightmare, depending upon whether you receive or pay the subsidies), but everything else stayed unchanged. I did, however, kick the date from 2096 to 2099, to keep the century spacing with today. The good news for socialist transit planners is still there: "RIDERSHIP" numbers are way up. The bad news for the riders is still there: HSRA's BULLET TRAIN has not shown-up for a long time. (Perhaps it was the planning: infrastructure erected on socialism=the Soviet model for failure.) Have you read Solzhenitsyn's *The Gulag Archipelago* (1973), especially their futility running the Russian railroads with Soviet planners at the helm in chapter 2, "The History of our Sewage Disposal System"? What will history say about our generation: We defeated the USSR, and then adopted their economic philosophy? This is my reply to Senator Kopp's remark: "If the private sector won't build it, then the public sector will." You ought to convene your next meeting beside the plaque outside the Visitors' Center on the top of San Luis Reservoir, and require all supporters of the Soviet-style Bullet Train to read it aloud a hundred times, in unison. Then, you ought to ask for a moment of silence to remember all the small businesses that the socialist transit planners kill-off in the next century. *Caveat Viator!*

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl.

cc: Editor Hollister *Free Lance*

cc: HSRA Members via Mehdi Morshed & Dan Leavitt

TO THE PACHECO STATION

(with apologies to Edmund O. Wilson)

A Play in One Act

by

Joseph P. Thompson, Esq.

Act I

Scene One - A Spring Day, 2099

Pacheco Pass Bullet Train Station

Dramatis Personae

Boris Zlotoff, a passenger.

Elmer Schiekelergruber, passenger.

Enter a passenger carrying his baggage, and gets into a seemingly endless line of people waiting for the train. In the background, graffiti covers all of the concrete walls of the dark, dilapidated station.

BORIS

Hello Comrade Schiekelergruber.

ELMER

(Putting down his baggage and rubbing his beard.) Hello Comrade Zlotoff. I see you've found yourself a razor, you lucky dog. Where did you find it?

BORIS

(Quietly.) Well, of course I will not admit it, but I always told you, it's "who" you know, not "what." Besides, if I told then my source may dry-up on me.

ELMER

I suppose it is one of your contacts at the Ministry of Truth! Why are you so lucky?

BORIS

Comrade, please! Try to be a little circumspect! Well, if the train doesn't come today, all my contacts at the Ministry are going to evaporate. Dammit, they promised that it would run today!

ELMER

How long have you been waiting in line?

BORIS

About two hours now. After waiting all day yesterday I'm a bit desperate to say the least! The Boss is expecting me at the Ministry. I've just got to get there.

ELMER

(Looking out over the audience.) I wonder what the view was like here a hundred years ago--before they built the Bullet Train through the pass?

BORIS

Or better yet, what about two hundred years ago when the miners opened-up the New Idria Mine? They must have been a sturdy bunch to survive out here.

ELMER

Dirty capitalist diggers be damned! But at least they had razors! Say, when do you think it all turned against their kind?

BORIS

What do you mean?

ELMER

Their dirty capitalist system--whenever did it start to changeover to ours?

BORIS

(Looking both ways and over his shoulder.) Well, you know, at the Ministry of Truth I re-wrote a few stories about the initial phases of this damned Bullet Train System, so that its early successes would not contrast with the mess we have today. It may have actually been the crucial turning point from the old system to ours.

ELMER

You mean that this Train was running successfully once?

BORIS

(Again looking over his shoulder.) Yes, in the early days after it was built, about 2010. Back then it was running daily and right on time with the published schedules!

ELMER

Remarkable!

BORIS

Well, anyway, it was when Comrade Peter Frusetta was the People's representative, or "Assemblyman," as they were then called. Apparently, from what I read, he and other assemblymen accepted the notion as "partnership" with the federal government. It was built with taxpayers' money--more than twice the original estimate of \$24 billion. Before the groundbreaking ceremony, they predicted that it would only lose \$800 million a year.

ELMER

You mean it was worse than that?

BORIS

Well, like all the earlier efforts, they underestimated costs and overestimated revenues. It actually lost twice as much as that when it was new!

ELMER

No wonder we are stuck here!

BORIS

Comrade! Patience! I have it on very good authority that today we will see the Bullet Train arrive.

ELMER

Sorry. It's just that I'm sick and tired of everything decaying and decrepit.

BORIS

Steady now. How about if I loan you my new razor--just once--so that you can have a shave?

That'll make you feel better.

ELMER

Thanks, I'd like that. What was this fellow Frusetta like, anyhow? I assume he was from these parts?

BORIS

Yes, in fact he was a local rancher and cattleman. Ran on the strength of his independence--a big, warm and friendly man, I've read.

ELMER

(Looking furtively around and over his shoulder.) With the demise of the Soviet Union, you would've guessed that Frusetta and his fellows would have been less inclined to opt for nationalized industry?

BORIS

(Looking scared and furtively around them.) Friend! (Whispering.) Do be careful what you say--you may be overheard!

ELMER

Nobody's paying any attention-they're all asleep on their feet!

BORIS

You can never be too careful! The monitors may scan your direction at the wrong moment. Your lips may be read!

ELMER

Okay. Okay. I know. I will. It's just that I'm so damned frustrated. Nothing works. And this damned Bullet Train is the last straw.

BORIS

Patience, Comrade. Here, take this razor and go and have a close shave in the restrooms. There's no hot water, but I'm sure you're tired of that dirty beard.

ELMER

Thanks. Yes I am. You are a dear friend! Tell me more about Comrade Frusetta's generation.

BORIS

Well, strictly off-the-record, it wasn't too long after the break-up of the Old Soviet Union, about the turn of the last century. Soviet America, or "America," as it was then called, bought into the notion that government ownership of business was a good thing. Even though other countries were denationalizing their industries, they envisioned a "partnership" of state, local and federal governments providing the citizens' basic needs.

ELMER

But I thought you said that Comrade Frusetta was independent minded?

BORIS

Well, apparently he was, but he was sold on the idea and ignored history. They always do.

ELMER

No sign of the Train--I think I'll go have that shave with your new razor--I can't wait any longer.

BORIS

Go ahead. With the post-earthquake slow-orders keeping the Train's speed down to 5-6 MPH, I'll see it long before it pulls into the Station and if I spot it I'll come and get you.

ELMER

Yes. I'll go and shave--cannot remember my last one! But when I come back, tell me more about Peter Frusetta.

BORIS

More? That's it! That's everything that history has on him so far as I can determine. But we do owe him and his fellows a lot--where would we be today without him?

c:\jpt\trans\pacheco

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May 14, 1998

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The Honorable Edward G. Jordan, Chairman
High Speed Rail Authority
980 Ninth Street, Suite 2450
P. O. BOX 942874, MS-74
Sacramento, CA 94274-0001

Re: Transportation Policy & California HSR

Dear Mr. Jordan,

On behalf of "stakeholders" everywhere, I want to thank you and your fellow members for convening the HSRA's most recent meeting in San Jose, which, as you know, is the largest city in North America without an intermodal facility (see my letter to Secretary Slater enclosed). As I said to the HSRC in Fresno after Senator Costa's inspiring remarks, the HSRA takes its place in history amongst an established tradition of well-meaning, similar commissions, whose wisdom and follies Professor Levine so accurately described in *National Transportation Policy: A Study of Studies* (1978). Silicon Valley exemplifies the best and the worst in transportation policy dominated by public sector planners, and ought to serve as a clear lesson for you and the other members of the HSRA as you embark upon your historic quest to build HSR in California. As I said to you at the last meeting of the HSRC in San Francisco, there can be no doubting the noble endeavor you pursue when gauged by the President's last words to John Hay as he left for Ford's Theater.

I sincerely hope that my paper that I gave to you and the other members, "ISTEA Reauthorization and the National Transportation Policy," *Transportation Law Journal*, Vol. 25, No. 1 (1997), and the shorter version, "ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," *Transportation Lawyer* (Dec. 1997), will aid you in perceiving the historic position that you occupy. Moreover, I was encouraged by the members receptiveness at my recommendation that, as part of your next educational session in

Hon. Edward G. Jordan
High Speed Rail Authority
May 14, 1998
page 2

Bakersfield, they study Harvard University Professors Meyer and Gomez-Ibanez Brookings Institution multinational report, *Going Private: The International Experience with Transport Privatization* (1993), which I showed to you. A serious examination of the vital issues you face will not omit their timely, revealing work. If you do you must agree with me that the most crucial question for the Authority is the same one that our former Mayor and Congressman from San Jose posed in 1995, shortly before he left office and his chairmanship of the House Subcommittee on Surface Transportation.

I urge the Authority members to consider well Mr. Mineta's stirring words to the students at the International Institute for Surface Transportation Policy Studies (IISTPS) at San Jose State University, quoted in my paper. His conclusion, reached after long tenure on transportation and public works committees in the House, was that the most crucial question in transportation today is: "*What should government do, and what should it leave to others?*" His conclusion is reflected in Harvard Professor John D. Donahue's seminal work, *The Privatization Decision: Public Ends, Private Means* (1989), which is also cited in my paper.

Also, in your deliberations I urge you to consider the address given to the IISTPS students last summer here in San Jose by Congressman James Oberstar, who exhorted the students to look to our Pacific Rim neighbors' transportation activities for inspiration in the study of transportation policy for this Nation. I especially urge you to look at the recent history of our nearest Pacific Rim neighbor, and consider the dire consequences for this Nation if you and others like you take us down the same road that the Soviet planners took (see my letter to Congressman Oberstar enclosed).

As I said to you in San Jose, Senator Kopp's remarks at your investiture ceremonies in San Francisco on Nov. 13th, recalling the effort of the Big Four to create the Central Pacific, brought to mind Matthew Josephson's enduring *Robber Barons* (1934), wherein he relates the "P.R." campaign by Governor Stanford and his partners, Messrs. Crocker, Hopkins, and Huntington (see my letter to Senator Kopp enclosed). Where is the wisdom in trying to sell a fatally-flawed philosophy to the voters in California when recent history has proven that sustainable solutions must rely on the private sector, not Soviet-style fiascos. Look at the success of the Internet after it left government ownership. I am enclosing my reply to Senator Kopp, who wrote to me saying that the private sector would not give California a Bullet Train, and I urge you to make it part of your record so that

Hon. Edward G. Jordan
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May 14, 1998
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historians may know that you had a glimpse of a future to which your errors might condemn future generations (see enclosed play, *To the Panoche Station*, which was written when you were considering routing the HSR over Panoche Pass).

As you know, the genesis of Conrail shows us how politics can subsume transportation policy, just as the gang rape of the National Transportation Policy and the disintegration of the Interstate Commerce Commission do. Maybe there is no other option for a democracy than to endure what Mr. Justice Holmes called "the felt necessities of the time." But you must never forget President Lincoln's immortal words of advice to policy-makers like you and your fellow members: "Only we ourselves can cause our demise as a Nation." When you travel to other countries, peer deeply, and look beyond their Bullet Trains, and see their crushing tax burdens that their nationalized industries impose on their citizens. Ask yourselves if you want future generations of Americans and its incomparable enterprise and ingenuity encumbered by similar socialized notions. Ask yourselves: "If we defeated the USSR, why would we adopt their economic philosophy?" You cannot deny the existence of the world-wide privatization revolution, and the economic justification for the denationalization in transport in Canada, Mexico, Great Britain, Australia, New Zealand, and many other nations. As you consider how to create a sustainable high speed rail system in California, you must consider the historical background upon which we now stand. Rather than sponsoring a P.R. campaign to sell a fatal dose of socialism to the voters in California, I urge you to learn from history, and consider such multinational studies as the one by Professors Ott and Hartley, *Privatization and Economic Efficiency: A Comparative Analysis of Developed and Developing Countries* (1991). I believe that California deserves no less from you in your planning this great transportation system.

I look forward to participating in the educational meeting that you hold in Bakersfield on the 20th of this month.

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl.
cc: HSRA Members

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February 16, 1996

**The Honorable Quentin Kopp
CALIFORNIA STATE SENATE
2057 Capitol Building
Sacramento, CA 95814**

Re: California Transportation Policy

Dear Senator Kopp,

While the need for high speed passenger trains in California, and the entire Nation, is obvious to any student of transportation, it appears to me that the HSR Commission is completely ignoring the only viable alternative to providing them.

Instead of using the existing railroads, staying with private enterprise, which past generations bequeathed to us, the Commission seems to be hypnotized by socialism. At a time when privatization around the world is correcting the mistakes of publicly-owned transportation, e.g., Australia, Canada, New Zealand, England, Western Europe, etc., the Commission seems to be falling under the fatal attraction of a ruinous fiscal belief that cost does not matter.

Do we have the ability to learn from our history? Will we ignore it and be condemned to follow the course of the Soviet Union? IISTPS Executive Director Ron Diridon, addressing the students at SJS, said that transportation decisions hinge on three things, "Finance, finance, finance." Rather, I believe it hinges on policy, because the latter predetermines the former.

The legislative findings in SCR 6 are undoubtedly true, but the solution currently being proposed by the Commission is a nightmare, which, if brought into existence, will certainly plunge us down the path followed by the Soviet Union.

Why not consider changing policy to attain the same goal? Why seek to ruin California's economy in a search for "finance," when by adherence to the nation's transportation policy, and its rail transportation policy, we could have bullet trains without spending tax dollars? If this country had adhered to these national policies since the end of WWII, would we have seen thousands of miles of

track abandoned? Would we have invested untold billions in the creation of the interstate highway system? Would we be addicted to automobiles today? Are we in denial about our addiction, which blinds us to our violation of our own national transportation policies?

If the law said: (1) freeze truck lengths, (2) prohibit triples, (3) return weight limits to something that would not break concrete freeways, (4) reverse the intercity freight trend since WWII, then how much less money would we need for such things as: (1) highway maintenance, (2) fuel, (3) injury, death, property damage expenses? If policy were made by wiser men than we seem to have had in charge since the end of WWII, would we have (1) cleaner air, (2) less highway congestion, (3) lower health care costs?

If the government is in control, why not set transportation policy and tell each mode what it was going to do based on decisions favorable to the people? If we can move freight profitably, but not passengers, then why not mix the two in one revenue stream to attain satisfactory corporate profit levels? Divorcing rail passenger from rail freight in 1970 was a big policy mistake, and some in Congress seem to have recognized that now by enacting legislation requiring Amtrak to break-even in seven years. Of course, without the freight revenues it can never do so in the face of highway and airline competition, and the vast federal subsidies given to those modes.

The solution lies in equal treatment by government of the different modes, and in freight revenue subsidizing the unprofitable passenger fares, just as earlier generations, who faced these same decisions, learned. While it might come as a shock to the Commission's staff and members, we have railroads. The trouble is that we ignore them and have favored their competitors with billions of dollars of subsidies. Our policy makers apparently prefer our citizens to use four times as much fuel to move our freight, and to sit on congested freeways, rather than establish transportation policy which capitalizes on the inherent advantages of the railroads. Amazingly, the stated policy is already in the statutes, but in practice we do not follow it! Why?

The Commission's current study suffers from myopic concentration on a fantasy, rather than realistic appreciation for the wisdom of earlier generations. Why are the Commissioners not investigating the obvious solution of using our railroads to accomplish this goal? French and Japanese transit systems, like

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those in this Country, operate at a huge loss, requiring taxpayer subsidies of ever more scarce tax dollars.

Instead of trying to imagine millions and billions of dollars, this needs to be put in terms that are understandable, and revealed to the voters for what it is. For example, when Amtrak was formed in 1970 it was cheaper to send a passenger from LA to NY by taxi, and pay the cabby a \$100 tip, than to send him by Amtrak. When METRO was built in Washington, D.C., it was cheaper for each rider to be furnished with a Mercedes than to ride public transit. For BART, the riders could have two BMW's and the taxpayers were better off.

Of course, these solutions are just as stupid as the ones our decision makers and planners gave us. The arrogance of today is to forget the wisdom of the past. Who gained by selling those cars, building those interstate highways?

Harvey Levine's seminal work, National Transportation Policy: A Study of Studies, ought to be required reading for both the Commissioners and the staff, not to mention our decision makers.

When we needed a transcontinental railroad, did we opt for government-owned railroads? Whenever WWI's demands caused nationalization of the railroads, did we keep them that way? Does government owned business work in the long run? Do we want to go the same way as the Soviet Union?

No!

When I testified 2/2/96 before the Commission in Fresno, I showed them the Harvard doctoral dissertation by John D. Donahue, The Privatization Decision (1989), and reminded them of the Wall Street Journal special edition on privatization that was published in October. I said that if they were a board of directors of a corporation then they would have been terminated. They did not effectively cross-examine the experts brought before them by their own staff. They did not realize that the "profits" displayed by the French Officials were for a trunk line route, and that the truth is that system-wide the French experience is no better than that of the best American public transit system. They are considering borrowing billions to create a line that will require \$800 million annually just to service the debt (bonds) it creates! There can be no doubt that Big Brother's slogan pales in comparison with this proposal: "WAR IS PEACE, FREEDOM IS SLAVERY, IGNORANCE IS STRENGTH."

As I said to Mr. Mineta, we are, I believe, about half nationalized and half free-enterprise in transportation. Can this situation last? It is not unlike an earlier period in our history:

"If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed.

A house divided against itself cannot stand."

At this point, too, we are at a crucial stage of evolution in the nation's history: We are a house divided.

The Lincoln administration decided that our railroads would be privately owned, with construction financed by government-backed securities. Today we appear to have rejected the policy of free-enterprise ownership because we continually create "authorities" and "agencies" to own and operate our rail passenger mode. The same is true with bus transportation. Now I hear that Amtrak will be moving freight. We have abandoned not only thousands of miles of rail, but as a nation we have also abandoned the policy of private ownership of transportation. Our elected officials boast about what they have done, but not one of them will tell you how much it costs per passenger (or per passenger-mile) to transport people by bus or rail. Deregulation during the past 15 years has rendered the private transportation sector a virtual graveyard. So where are we, and where are we going? How can we have nationalized industry and reduce the budget deficit?

To paraphrase Mr. Lincoln, if we could first know where we are, and "whither we are tending," we could better judge what to do, and how to do it. Our national transportation policy was initiated with the "avowed object" and confident promise of creating a sound national transportation system. Under the operation of that policy,

one national goal is to make the county competitive on the global arena. In my opinion, it will not happen until a crisis shall have been reached and passed.

Today we are at a point where we are half slave to public ownership of transportation, and half free-enterprise. The trend, however, runs counter to private ownership. Reversing the trend becomes increasingly difficult as we commit vast resources of our society to nationalized modes.

Again to paraphrase, I believe that the nation's transportation system "cannot endure permanently half slave and half free." I do not expect the nation will be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of nationalization will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike in all modes of transportation.

We will then have arrived at the stage of development, and an experience similar to that of the demise of the Soviet Union must ultimately follow because government-owned industry does not work in the long-run. Great Britain and other western European countries, Canada, Australia and New Zealand are all privatizing previously nationalized industries because they have realized the truth in this. Nevertheless, our elected representatives push for more government-owned transportation modes each passing year.

Today we could send six passengers by limousine from Gilroy to San Jose cheaper than it costs us to send them on Caltrain. Yet if private industry moved those passengers and a fair share of the available freight tonnage, the burden on the taxpayers would lessen, road congestion, health care costs, and air pollution would decline. Local government would enjoy another source of tax revenue.

Since WWII, creation of the interstate highway system has diverted a greater percentage of intercity freight traffic away from the rails each passing year. Separating freight from passengers on the railroads was a decision rejecting earlier generations' investments, and plunging us along a course toward Soviet-style industry, and we know how well that system worked. I

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keep asking our elected officials: If government ownership of industry failed in the Soviet Union, then why are we trying it? promoting it? How can America compete in "global markets" if it is saddled with deadweight nationalized transportation modes?

The Emperor has no clothes! We cannot afford to borrow billions to build a rail passenger line that loses millions each year. This is especially true when we have an existing alternative that will not cost the taxpayers any money at all. All it takes is someone strong enough to enforce the nation's transportation policies that are already on the books. We need not reinvent government to accomplish this goal, but rather, merely keep this a government of, by, and for the people.

Thank you for giving me an opportunity to make this comment. My formal response to the Commission will follow as soon as I complete it.

Respectfully yours,

JOSEPH P. THOMPSON

Encl.

cc: Hon. Henry Mello
cc: Hon. Dean R. Dunphy
cc: Hon. Peter Frusetta
cc: Commissioners
cc: Executive Director Daniel S. Leavitt
cc: Rod Diridon, IISTPS

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December 15, 1997

The Honorable Quentin Kopp
CALIFORNIA STATE SENATE
2057 Capitol Building
Sacramento, CA 95814

Re: California Transportation Policy

Dear Senator Kopp,

As a small token of my appreciation for your inspiration and thought-provoking ideas, and in recognition of your independence, which I deeply admire, I am pleased to enclose a copy of my recent paper, which will appear in the next issue of **Transportation Lawyer**. It is a shortened version of my paper that will be published in the Fall 1997 edition of the **Transportation Law Journal** from the University of Denver's School of Law.

I personally want to thank you for infusing me with new inspiration to pursue post-doctoral study of transportation policy, and I send you and all the members of your staff my best wishes for a Happy Holiday Season.

Your remarks about Governor Stanford (and the Big Four), as reported in the press, at the installation of HSRA members, brought back Matthew Josephson's **Robber Barons** to my mind. At least they were following a capitalist, if, nevertheless, corrupt, course. If you have not already done so, I recommend that you read Mr. Mineta's article that appeared in **Transportation Research News** (Sept.-Oct. 1997), "Federal Funding and Other National Issues." I pray for your guidance in the difficult task of formulating sound transportation policy for California. On behalf of transportation students everywhere, I send you my deepest appreciation for your leadership and dedication. **Caveat Viator!**

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

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ISTEA Reauthorization and the National Transportation Policy

A paper presented to the 68th Annual Meeting of the
Association for Transportation Law, Logistics & Policy
Santa Fe, New Mexico
June 25, 1997

by

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In memory of the late
Dr. Martin T. Farris, Certified Emeritus Member, AST&L
Professor of Transportation, Arizona State University

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ISTEA Reauthorization and the National Transportation Policy

Near the end of a long and distinguished career of public service, shortly before his retirement from Congress, the Honorable Norman Y. Mineta, then Chairman of the Surface Transportation Subcommittee, said at the 1995 Annual Dinner of the International Institute for Surface Transportation Policy Studies at San Jose State University, "The crucial question in transportation today is: What should government do? And what should it leave to others?" Mr. Mineta thus framed the paramount transportation policy issue facing us as we begin a new century. The answer we give to Mr. Mineta's "**Crucial Question**" will undoubtedly affect the course that the Nation pursues well into the future. Soon, reauthorization of the Intermodal Surface Transportation Efficiency Act of 1991, Pub.L. 102-240 ("ISTEA"), either by enactment of the Administration's bill, the National Economic Crossroads Transportation Efficiency Act of 1997 ("NEXTEA"), or one of the other proposals now before the Congress, will reveal how we embark upon the new century answering the Crucial Question. This paper will explore how the answer we give to the Crucial Question with ISTEA reauthorization legislation comports with the national transportation policy.

The Past as Prologue

Mr. Justice Holmes' conclusion toward the end of the last century in *The Common Law* that, "The life of the law has not been logic; it has been experience," has new meaning in the field of transportation law and policy. What Mr. Justice Holmes called the "felt necessities of the time" may be seen in each generation's framing and answering of what they perceive to be the crucial questions of their time. Does Abraham Lincoln's analogy of "A House Divided" have renewed application today when we find ourselves half slave to publicly owned transportation and half free enterprise? Will this generation's answer to the Crucial Question propel us toward the former or return us to the latter? Indeed finding ourselves at a "crossroads," will we opt for traditional capitalism, or something else?

The National Transportation Policy

It is said that physicists are searching for the Grand Unified Theory (GUT) to explain all the laws of the universe. I believe that we in transportation ought to be seeking the Grand Unified Transportation Theory (GUTT) to heal the artificial division that exists in American transportation policy today and to return us to our free enterprise roots. Saying that we have a National Transportation Policy (NTP) is like saying we have a Rule Against Hearsay. In Title 49 there are currently five transportation policies: Rail Transportation Policy, §10101; National Transportation Policy, §13101; Air Commerce and Safety Policy, §40101; National Mass Transportation Policy, §5301; and National Intermodal Transportation System Policy, §5501. Additionally, the U.S. Dept. of Transportation (USDOT) published its National Freight Transportation Policy in the *Federal Register* on Jan. 6, 1997.¹

History of the National Transportation Policy

Professor Farris traced our NTP to the Treaty of Paris in 1763 and the passage of the Northwest Ordinance in 1787.² Free enterprise capitalism was the key to our transportation industry growth, with Adam Smith's "Invisible Hand" receiving occasional support from the taxpayers for turnpikes, canals and railroads. When the excesses of human nature grew unacceptable, during the age of the Robber Barons, regulation by government was the response of generations to those "felt necessities of the time." Private ownership of industry, however, was retained, except for those natural monopolies like water, sewer and power. Uniquely, America rejected the notion that the government would own our transportation

¹49 U.S.C. §§5301 (mass transit), 5501 (intermodal), 10101 (rail), 13101 (truck), and 40101 (air). The "findings and purposes" for promoting commercial space transportation read like policy-making. 49 U.S.C. §70101(a),(b).

²Martin T. Farris & Paul T. McElhiney, eds., *Modern Transportation Selected Readings* (Houghton Mifflin Co., 2d ed.; 1973), "National Transportation Policy: Fact or Fiction?" p. 425 (hereafter FARRIS).

industries.³ Although the railroads were nationalized during WWI, even one of our most gifted orators, William Jennings Bryan, could not convince the American people that the "Plumb Plan" of joint federal-state ownership was preferable to privatization.⁴ Despite its many faults, the American people chose capitalism rather than switching to statism or socialism. The Transportation Act of 1940 was the first express transportation policy by Congress. However, almost each session of Congress since has added to or altered transportation policy, yielding a result that one should expect when political decision-making seeks solutions pleasing every transportation need of a diverse, growing population. Consequently, the NTP is taught to transportation students as "somewhat vague" and containing "numerous conflicting provisions."⁵ As Professors Coyle, Bardi and Novack conclude in their transportation textbook:

The federal government's policy toward transportation is a composite of these federal laws, rules, funding programs, and regulatory agencies; however, there is no unified federal transportation policy statement or goal that guides the federal government's actions.

In addition to the Congress and the president, there are more than 60 federal agencies and 30 congressional committees involved in setting transportation policy. There are two independent regulatory agencies that interpret transport law, establish operating rules, and set policy. Lastly, the Justice Department interprets statutes involving transportation and reconciles differences between the carriers and the public. Each of these groups has made decisions that have affected the development of transportation.⁶

Whether in war or peace, the NTP reflected rising concern with transportation problems in the United States and in other developed nations.⁷

³ See, generally, Harvey A. Levine, *National Transportation Policy: A Study of Studies* (Lexington: Lexington Books, 1978), especially, Ch. 1 "National Transportation Policy;" and Ch. 4 "Policy Overview," and "Nature of Transportation Subsidies," and Ch. 5, "Research/Policy Connection;" Philip D. Locklin, *Economics of Transportation* (5th ed., Homewood: Richard D. Irwin, Inc., 1960), Ch. 2 "The Transportation System of the United States;" Dudley F. Pegrum, *Transportation Economics and Public Policy* (Homewood: Richard D. Irwin, Inc., 1963), Ch. 3 "Development of Transportation in the United States;" and Ch. 16 "Transportation as a National Problem;" and Ch. 20 "Regulation and Administration in Transport Policy;" Roy J. Sampson and Martin T. Farris *Domestic Transportation: Practice, Theory and Policy* (3d ed., Boston: Houghton Mifflin, 1975); George W. Wilson *Economic Analysis of Intercity Freight Transportation* (Bloomington: Indiana U. Press, 1980); Donald F. Wood and James C. Johnson, *Contemporary Transportation* (Tulsa: PPC Books, 1980), Ch. 1 "Transportation and the Economy;" Ch. 2 "Government as a Provider of Transportation Services and Facilities;"

⁴Robert W. Cherny, *A Righteous Cause, The Life of William Jennings Bryan* (Norman, Ok: University of Oklahoma Press, 1994), p. 159.

⁵John J. Coyle, et al., *Transportation* (West Pub.Co., St. Paul: 4th ed. 1994), Ch.4, "Transportation Policy," p. 104, 108 (hereafter COYLE).

⁶COYLE, p. 104.

⁷David Banister and Peter Hall, *Transport and Public Policy Planning* (London: Mansell Pub., Ltd., 1981); Joseph Berechman *Public Transit Economics and Deregulation Policy* (Amsterdam: Elsevier Science Pub., B.V., 1993); K.J. Button and D. Gillingwater, *Future Transport Policy* (London: Croom Helm, Ltd., 1986); Paul W. Devore *Introduction to Transportation* (Worcester: Davis Pub. 1983); George M. Guess, ed., *Public Policy and Transit System Management* (NY: Greenwood Press, 1990) (hereafter GUESS); David W. Jones, Jr., *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985) (hereafter JONES); John B. Lansing *Transportation and Economic*

Evolving Transportation Policy

Of the many commentators, Professor James C. Nelson has given us enlightening perspective on the NTP's evolution.⁸ Writing during the Kennedy administration, Professor Nelson said "recent studies of regulatory agencies and public policy in transportation attest eloquently to the continuing public interest in the long-standing issue of the appropriate role for government in the transportation sector of the economy." At that point in time he saw "little legislative action," but that was quickly changed as Congress tackled mass transit problems. However, Professor Nelson did raise the "Crucial Question" by saying, "[t]he question of the proper role of the government in the allocation of traffic and resources in transport" was worthy of "a general review and evaluation." He saw two roles for government in transportation, promotion and regulation.

In the United States, government shares with private enterprise the risks and costs of providing transport in a mixed system of public and private enterprise. Government usually participates by furnishing the basic ways (and some terminals) while private enterprise conducts carrier operations over public facilities. Mixed enterprise is characteristic of air, highway and water transport but not of pipeline and railway transport. As most countries operate railway under public enterprise, this country's mix of private and public enterprise is unique.

The Crucial Question presented itself time and again in the post-war era, and so many studies were made that studies of the studies appeared.⁹ Every aspect of transportation has been examined and re-examined. Reflecting its importance to the economy and society, commissions and committees have devoted forests of paper and vast resources to this endeavor. Regardless of the report or study, they all recognize the role of federal tax dollars on our transportation systems.¹⁰

Transportation Subsidies and Policy

Call it aid, grants, assistance, tax breaks, or subsidies, there is little difference from a policy perspective. However, since "subsidy" has become a dirty word, we seldom see it used. Instead, "private-public partnership" has emerged as a popular buzzword to make. How do transportation subsidies distort our

Policy (New York: Free Press, 1966); Aurelio Menendez *Estimating Capital and Operating Costs in Urban Transportation Planning* (Westport, Ct.: Praeger, 1993); A.W.J. Thompson & L.C. Hunter, *The Nationalized Transport Industries* (Heinemann Educational Books, London, 1973).

⁸James C. Nelson, "Government's Role Toward Transportation," *Transportation Journal* (Summer 1962), reprinted in Martin T. Farris & Paul T. McElhiney, eds., *Modern Transportation Selected Readings* (Houghton Mifflin Co., Boston: 2d ed. 1973), p. 416-424 (hereafter NELSON).

⁹Harvey A. Levine, *National Transportation Policy: A Study of Studies* (Lexington: Lexington Books, 1978), Ch. 2 "Chronology of Research Studies" (hereafter LEVINE).

¹⁰GUESS, pp. 1-2. Professor Guess concludes that "federal aid remains the dominant force in shaping activities by state and local transit agencies" but "the incentives provided are often irrational from the perspectives of efficiency and effectiveness." *Id.* See, also, David W. Jones, Jr., *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985). Professor Jones concludes that federal subsidies have "not stabilized the industry and that compound changes in transit's basic way of doing business are necessary if mass transit is to play a significant role in the future of urban transportation. . . . Subsidy for transit is necessary and appropriate, but endlessly increasing subsidy is both inappropriate and unrealistic. It is time, in short, to consider the reorganization alternative--as difficult and painful as it may be."

transportation systems? First, however, can we agree on a definition of "subsidy"? It has been authoritatively said about subsidies:¹¹

One remarkable attribute of Government subsidies is the capacity of the very words themselves to conjure up marvelously diverse images in different minds. To most economists the subsidy is a useful fiscal instrument whose major purpose is to improve the private sector's allocation of resources among their alternative uses. To many laymen, on the other hand, subsidies are an elusive and worrisome phenomenon, frequently hidden from the general view and often suspected of being used more for private gain than for the public good. These widely divergent viewpoints appear to come mainly from differing perceptions of the efficiency with which private markets function. To the laissez-faire enthusiast there is little or no legitimate role for subsidies since, as he sees the world, free markets do the best job of organizing production to satisfy present and future consumer demands. Others, worried about the lack of strong competitive pressures for efficiency in concentrated markets and perceiving pervasive externalities, both beneficial and harmful, which are not taken into account by private business, actively support extensive Government intervention, through subsidies and other means, in the operation of private markets.

And, another highly respected economist said in the same study:¹²

Congress is not always adequately equipped to evaluate expenditure programs; the device of holding hearings is far from being a complete substitute for objective evaluation. **All too often hearings are dominated by the special interests who expect to benefit from them rather than by those who have to pay for them;** thus representatives of nonfarm sectors are rarely heard by the congressional committees on agriculture. . . . Another reason why special benefit programs need particular attention is the inertia in our political system, which tends to preserve such programs long after their initial justification (if indeed there was one) has disappeared. These **programs tend to create vested interests, whose anguished cries of ruin at the slightest suggestion of reform are usually loud enough to drown out the voice of reason.** Even if a program is widely conceded to be unsatisfactory, Congress is likely to let sleeping dogs lie by extending it unchanged rather than reforming it; the recent extension of the Sugar Act is one example. The laxity of our rules concerning political contributions may well aggravate the problem of inertia. [emphasis added]

The Taxpayers' Ideal Subsidy

These definitions of "subsidy" are as sound today as they were when those economists testified to the Joint Economic Committee of the Congress. Inducing private sector behavior with transportation subsidies has long been a feature of American politics and government. For the individual a particular subsidy may be "good" or "bad," depending on whether he pays for it or receives it. But for the Nation, a particular subsidy may diminish an "inherent advantage" of one mode of transportation to the advantage of a competing mode. We need to ask: Who actually benefits from the subsidy? The Grandfather of all transportation subsidies may have been the land grants to the railroads. In this case it was we taxpayers who enjoyed profits. Professor Nelson described the fiscal ramifications of the land grants to the railroads, and other subsidies, in exchange for reduced freight rates (under former Section 22 of the Interstate Commerce Act) for government freight and military passengers. By June 30, 1943, the rail rate breaks for the taxpayers were estimated to be \$580 million, "a sum several times the value of the granted land at the

¹¹U.S. Congress, Joint Economic Committee, *The Economics of Federal Subsidy Programs* (Wash., D.C.: USGPO, 1972), p. 1, George F. Break (Prof.Econ., U.C.-Berkeley), "Subsidies as an Instrument for Achieving Public Economy Goals."

¹²*Id.*, Hendrick S. Houthakker (Prof. Economics, Harvard), "The Control of Special Benefit Programs," p. 8.

time land grants were awarded and in excess of the sums derived by the railroads from the grants."¹³ Thus, this precedent-setting transportation subsidy proved that the taxpayers could actually profit from a Congressional deal to promote transportation, viz., infrastructure improvements. In other words, with private sector profit motives allowed to control, the promoters and the taxpayers (investors) both made huge profits. Have we learned from our history? Did subsequent Congressmen make equally advantageous agreements for later generations of taxpayers?

Subsidies Distort Transportation Industry Results

Before the railroad land grant subsidies, canals had been constructed by state agencies and operated with tolls recovering capital and operating costs. But just as highway subsidies would later affect the railroads' profitability, since about 1880, by which time the railroads had largely superseded the canals, the federal and state governments have provided improved waterways entirely free of user charges except on the St. Lawrence Seaway. Like a house of cards, tinkering with one card inevitably affects the whole transportation structure.

Even earlier, private turnpikes furnished main highways on a commercial basis; but, since 1850, highways have been provided by state and local governments, with ever-increasing federal aid (since 1916) for construction of limited federal-aid systems and with user fee support in the modern period.¹⁴ Finally, the federal government early undertook to provide the civil airways and facilities, with the synergistic benefits accruing to the airlines. As he concluded, "Over the years, tremendous sums have been spent by government in making way and terminal facilities available for use by private carriers; in giving direct subsidies to certain classes of carriers; and in engaging in expensive scientific research, and development for national security, making as a by-product much valuable technology available to the air carriers without charge to them."¹⁵

The national purposes for giving financial assistance to transport development are relevant to evaluation. Clearly, railroad grants had the unique national objective of stimulating initial settlement of undeveloped lands in the West by rapid development of a new transport technique, greatly reducing long-distance costs and increasing service speeds. Air transport aids sought improved postal communication, rapid introduction of a new technology, adequate equipment, aircraft manufacturing facilities and skilled personnel for national defense. Federal highway aid had improvement of rural postal services and stimulation of interstate commerce as its principal purposes; in addition, an underlying national defense interest has existed in a highly developed system of interstate highways adequate for the needs of commerce and the military. State highway investment largely has been in response to the way-service demands of a rapidly multiplying ownership of motor vehicles. The principal objectives for inland waterway improvement, including the no-toll policy, have been to give landlocked areas lower freight rates and to furnish additional competition for the railroads. The overall historical record indicates that perhaps the strongest motive for federal transport subsidies has been to bring about, more rapidly than otherwise would occur, the economic and social benefits of improvements in transport service and of lowered transport costs when entirely new transport technology became available. This was true of federal aids for highway and air transport development. That motive also stimulated the land grants to railroads, but with the significant difference that a century ago far greater emphasis was necessarily placed on land settlement and resource development in pioneering areas. The introduction of modern

¹³NELSON, p. 423, fn. 3.

¹⁴Federal transportation outlays for all modes increased from \$23.961 billion in 1980 to \$39.064 billion in 1994, measured in current dollars. Bureau of Transportation Statistics, *National Transportation Statistics 1997* (Wash., D.C.: USDOT/BTS Dec. 1996), p. 98.

¹⁵NELSON, p. 418.

air, highway and waterway transport came long after the railroads had already opened up most of the remote and under-developed regions of this country. The grant of subsidies to those modes was intended to exploit their technologies at a faster rate than market demand could accomplish so that the economy might earlier have the new types of services and competitive transport.¹⁶

Professor Nelson also concluded that as a broad generalization, the American system of mixed enterprise in transport has worked tolerably well. He said that it has produced a fully-developed, large-scale, multiservice and essentially competitive transport system that is the envy of most countries. Of course, when he wrote the United States was not the world's largest debtor nation!

In general, he stated, the promotional policies accomplished their purposes and the government has made a truly important contribution to the American transport system. But as government promotion also has created excess facilities and inefficient transport, this by no means implies that the best and most efficient system has resulted. Nor does it mean that past policies necessarily should be continued indefinitely.¹⁷

But, looking objectively at the justification for continuing subsidies to domestic transport, it seems clear that most historical reasons for subsidies have disappeared long ago. There is, he said, no present need for land grants to stimulate initial development of railways. Also, motor transport is now a mature and thriving industry, operating over highways with high-type surfaces throughout the land. Although expanding traffic and urban congestion obviously require highway expansion, plainly there is no longer any need for public subsidies to introduce the advantages of motor transport to the American economy! He believed that most needed highway development would come as rapidly as can be economically justified in response to effective demand on the basis of appropriate user fees and tolls. The quick additions of modern highways in congested areas by state-owned toll road authorities suggest that the required facilities would come sooner on a full commercial basis than under existing so-called free-road policies.

Air transport, he said, should no longer be regarded as an infant industry in need of developmental subsidies, except for non-economic subsidization of local and metropolitan airlines to give rural and urban communities more advantages of the air age. The rapid introduction of airline technology did not cease, nor even slacken, with cessation of air-mail subsidies to the trunk lines. He predicted that placing user fees on the civil airways over a period of time would not seriously impede beneficial innovations.

The traffic growth experienced by barge lines on well-located waterways suggests that free channel and lock services are no longer essential to intensive use of inland waterways. Since the traffic on marginal waterways does not rise to efficient levels without user fees, serious questions can be asked concerning the economic justification of continued investment in such waterways.¹⁸

Professor Nelson believed that the beneficial general results of this country's policy of stimulating economic development through encouraging adequate, efficient and competitive transport with subsidies have long ago been achieved. Today, he said, the problem of transport policy is radically different than during the 1830-1930 period. He also said, "Insufficient attention has been given to this fact in formulating transport policies in recent years."

The transport problem today, and in the foreseeable future, is to promote the right economic development of each of the five contending agencies, including coordinated services by two or more modes. The primary aim of policy can no longer be to foster initial economic development of the western regions, nor even to hasten the introduction of new transport industries by means of subsidies. This is not

¹⁶NELSON, p. 418.

¹⁷NELSON, p. 418.

¹⁸*Id.*

to say that transport modes now not visualized will never be invented. Rather, present-day policymakers face well-defined and critical questions growing out of the existing relations among carriers, the current promotional and regulatory policies, and the competitive structure of transport. Thus, it would seem wholly unreasonable to leave the question of what subsidies may be desirable for promoting rapid development of a new transport mode until someone invents it and operations appear to be practicable.¹⁹

The Past Government Role: Regulation

The remaining general problem of government relations to transport is how best to promote adequate and efficient transport by self-sustaining modes, all paying appropriately adjusted user fees or providing their own way.²⁰ The concept of "self-sustaining modes" of transportation has, however, come to mean two completely different things, depending on whether the carrier is in the public or private sector. In the corporate form a carrier can seek out a variety of sources of income in the marketplace, whereas the public sector carrier lacks the freedom to engage in commercial activities. So, since farebox revenues are usually a small portion of total costs of operation (and a smaller portion of overall expenses), taxpayers subsidies are thought to be the only way to keep the operation moving. However, as recent calls for freight revenue for Amtrack reveal, if the public sector carriers were returned to the private sector, and enough other revenue attracted, e.g., freight revenues, then the need for taxpayers subsidies would diminish or cease altogether.

It is when we answer the Crucial Question by saying that transportation must solve social problems (e.g., Welfare to Work; Spare the Air; Rebuilding America) that we justify continued taxpayer subsidies.²¹

Professor Nelson asked: "How, then, can the role of government in transport be adjusted to serve a more economic purpose?" And he answered the Crucial Question in this way:

Is it assumed that government's role is ideal when it encourages provision of essential transport at the least total costs, including social costs.

Over the long run, the role of government can become more economic only to the extent that promotional and regulatory policies are designed to be fully consistent with achieving maximum overall economy in transport and high standards of efficiency in each of the several modes. The national transport problem of today is not to stimulate an initial supply of efficient techniques of transport nor to encourage development of vast underdeveloped land resources, but rather it consists of facilitating the right economic development of each mode of transport, including the essential public way and terminal facilities. Consequently, in the promotional sphere government should not continue subsidy after its economically valid purposes have been accomplished. And so much of the nation's capital is involved in public transport investments that they should be limited by fully economic investment criteria and by universal user fees, properly adjusted to the conditions of utilization and to require all transport alternatives and resource costs involved to be considered in expanding public transport facilities.²²

¹⁹NELSON, p. 419.

²⁰*Id.* For an overall, in depth discussion of the implications of deregulation of the transportation industry, see, Paul S. Dempsey, *The Social and Economic Consequences of Deregulation: The Transportation Industry in Transition* (New York: Quorum Books, 1989).

²¹ According to an excellent study by Professor Don H. Pickrell, Harvard University, and Transportation Systems Center, U.S. Department of Transportation, Cambridge, Mass., transit subsidies are rapidly increasing to cover growing transit systems' operating losses all across the Nation. Don H. Pickrell, "Rising Deficits and the Uses of Transit Subsidies in the United States," *Journal of Transport Economics and Policy* (Sept., 1985), pp. 281-298.

²²NELSON, p. 422.

After WWII a series of detailed government reports analyzed how we failed in practice to attain the goals of the NTP.²³ Professor Farris identified two types of NTP: "informal institutional policy" and "formal statutory policy."²⁴ In a detailed analysis which is equally valid today, he concluded that the NTP is incomplete and inconsistent and contains indefinable terms.²⁵ He concluded:

Undoubtedly the national transportation policy is a *fiction*. As stated in the declaration, it has many shortcomings. It is incomplete, inconsistent, and indefinable. From the point of view of containing generally acceptable ideas, the declaration of national transportation policy is a *fact*. It does contain acceptable goals and it does establish ideals to be sought. Although one may be critical of the goals and ideals, it is a fact that they are indeed present in the declaration. In a word, national transportation policy is both a fact *and* a fiction.²⁶

Written when the USDOT was new, Professor Farris accurately predicted that "the executive branch will assume a larger and more forceful role than in the past."²⁷ Since then, the Crucial Question has been answered time and again by increasing the federal government's role in transportation.²⁸ For example, the President's Executive Order No. 12893, Jan 26, 1994,²⁹ requires the agencies to "seek private sector

²³The "Sawyer Report" of the U.S. Dept. of Commerce, *Issues Involved in a Unified and Coordinated Federal Program for Transportation* (Wash., D.C.: USGPO 1949); the "Weeks Report" (sometimes called the Cabinet Committee Report), Presidential Advisory Committee on Transportation Policy and Organization, *A Report to the President on Revision of Federal Transportation Policy* (Wash, D.C.: USGPO 1955); the "Mueller Report," U.S. Dept. of Commerce, *Federal Transportation Policy and Program* (March 1960); and the "Doyle Report," prepared for the U.S. Senate, Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess., by the Special Study Group on Transportation Policies in the United States, *National Transportation Policy* (Wash, D.C.: USGPO 1961).

²⁴FARRIS, p. 425.

²⁵*Id.*, p. 427-431.

²⁶*Id.*, p. 432.

²⁷*Id.*, p. 425.

²⁸Federal preemption by Congressional action (e.g., Airline Deregulation Act of 1978, Pub.L. No. 91-504, 92 Stat. 1705, Trucking Industry Regulatory Reform Act of 1994, Pub.L. No. 103-311, 108 Stat. 1683, Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103-305, 108 Stat. 1604, and the Interstate Commerce Commission Termination Act of 1995, Pub.L. No. 104-88, 109 Stat. 803), and Supreme Court construction of the Commerce Clause, the Supremacy Clause, and the Tenth Amendment, have exploded the myth of "private-public partnerships" and "state-federal partnerships" in transportation today. 49 U.S.C. §§14501, 41713; *Morales v. Trans World Airlines*, 504 U.S. 374 (1992), *American Airlines v. Wolens*, 513 U.S. 219 (1995), *Kelley v. U.S.*, 69 F.3d 1503 (10th Cir. 1995), *cert. denied*, ___ U.S. ___, 116 S.Ct. 1566, 134 L.Ed.2d 665 (1996); see, generally, Robert E. McFarland, "Section 601 Redux," 4 *The Transportation Lawyer* 23 (1995), and "The Preemption of Tort and Other Common Causes of Action Against Air, Motor, and Rail Carriers," 24 *Transportation Law Journal* 155 (1997); "Federal Preemption of State Consumer Fraud Regulations: *American Airlines, Inc. v. Wolens*, 115 S.Ct. 817 (1995), 18 *Harvard Journal of Law & Public Policy* 903 (1996).

²⁹*Executive Order No. 12893*, Jan. 26, 1994, "Principles of Federal Infrastructure Investments," §2(c): Private Sector Participation. "Agencies shall seek private sector participation in infrastructure investment and management. Innovative public-private

participation in infrastructure investment and management," but reliance on taxes, rather than user fees, e.g., farebox revenues (the passengers' "co-pay" in current parlance) is the choice our elected representatives make as they promise to satisfy everyone's transportation needs. Meanwhile, these criticisms of the NTP remain accurate.³⁰ There are so many exceptions made to the NTP in the demands of our political process that we honor it more in the breach than the observance.³¹ We give lip service to the goal, but reveal our selfish selves by our conduct. Our elected representatives summon us to attack the "federal pot of funds." Ironically, we demand unlimited transportation services at the same time that we demand that government balance its budget. How can we have both? Are we in effect a society "trapped in a preoccupation with the public rather than the private" in seeking transportation problem solutions?³²

Intermodal Surface Transportation Efficiency Act

ISTEA "broke new ground" in how America's States and metropolitan regions approach transportation planning and investment decision-making, according to the USDOT.³³ According to President George Bush, it was a "jobs" bill, as he said at the ISTEA signing ceremony.³⁴ ISTEA's hallmarks may be found in its "Declaration of Policy," the very first paragraph of which states:

It is the policy of the United States Government to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner.³⁵

As Professor Farris recognized, the internal inconsistency of the NTP of trying to be economically efficient while satisfying all of the transportation expectations of every person in the Nation continues to make impossible an acceptable answer to Mr. Mineta's Crucial Question. Advocates of competing modes

initiatives can bring about greater private sector participation in the ownership, financing, construction, and operation of the infrastructure programs referred to in section 1 of this order. Consistent with the public interest, agencies should work with State and local entities to minimize legal and regulatory barriers to private sector participation in the provision of infrastructure facilities and services." No definition of "public-private initiatives" is found, or how they may differ from "private-public partnerships."

³⁰George Eads, "Economists versus Regulators," *Perspectives on Federal Transportation Policy* (Wash, D.C.: American Enterprise Institute for Public Policy Research, 1975), pp. 101-109. Professor Eads' "conviction" is that "the market, though imperfect, works better than the sort of regulation society is likely to get, barring commissions composed of omnipotent, omniscient, benevolent dictators." *Id.*, p. 108. See, also, Thomas A. Till, "National Transportation Policy: The Need for a Clear Concept," *Proceedings: Fifteenth Annual Meeting Transportation Research Forum* (Oxford, Ind.: Richard B. Cross Co., 1974), pp. 18-22; and Herman Mertins, Jr., *National Transportation Policy in Transition* (Lexington, Mass.: D.C. Heath & Co., 1972), Ch. 8 "Perspective on National Transportation Policy."

³¹Donald L. Barlett and James B. Steele, *America: What Went Wrong?* (Kansas City: Andrews & McMeel, 1992), Ch. 6 "The High Cost of Deregulation," p. 105.

³²Robin Paul Malloy, *Planning for Serfdom: Legal Economic Discourse and Downtown Development* (Philadelphia, Pa.: U. Penn. Press, 1991), p. 1 (hereafter MALLOY).

³³USDOT, Report on the U.S. Dept. of Transportation's Outreach on Reauthorization of the Intermodal Surface Transportation Efficiency Act, *How to Keep America Moving: ISTEA-Transportation for the 21st Century*, Jan. 20, 1997, p. 1.

³⁴*Traffic World*, Dec. 9, 1991, p. 4.

³⁵49 U.S.C. §5501(a).

and needs want the available funds spent on their "felt necessities" and not those of someone else. Transportation thus becomes a means to an end, e.g., urban redevelopment, air pollution mitigation, unemployment reduction, infrastructure improvement, etc. Transferring "social costs" to transportation systems to solve myriad social problems and achieve non-transport goals distorts the reality of transportation.³⁶ Taxpayers want to know what the government is doing taking over the responsibility for unprofitable transportation systems when a free enterprise solution exists in an equitable division of freight revenues between the various modes.³⁷

"ISTEA, NEXTEA, BESTEA, HOTTEA, or Jim Jones' Koolaid"

NEXTEA seeks to "continue the successful federal role in developing a national intermodal surface transportation system through programs that ensure the safe and efficient movement of people and goods, improve economic productivity, preserve the environment, and strengthen partnerships among all levels of the government and the private sector."³⁸ Of course, if by "success" you mean increasing tax burdens to finance nationalized industry, then NEXTEA could become a "successful" successor to ISTEA. The public debate on ISTEA reauthorization curiously omits mention of the Crucial Question. The "web of alliances and interests"³⁹ clash with coalitions in what *Traffic World* describes as a "titanic struggle" over the federal Pot 'o Funds to be appropriated in the "mother of all transportation bills."⁴⁰ Each coalition accuses the other of being "self-serving," while touting their own proposal as best for the public. However, all of them urge greater government subsidies, and therefore, higher tax burdens. Underlying this struggle lies the Crucial Question and the internal inconsistencies in the NTP. The "Divided House" of transportation policy continues to worsen as ever larger taxpayer subsidies (ISTEA-type "investments") are required to fund what would otherwise be bankrupt businesses. It seems as if an "Iron Curtain" has been erected by those advocates of taxpayer funded transportation, creating an artificial barrier between nationalized transportation and free enterprise transportation. While a privatization revolution is occurring around the world, private sector transportation in the United States is being consumed by politically fueled notions of public ownership which history has shown are not sustainable over the long haul.⁴¹ Metropolitan Planning Organization (MPO) transportation planners say that they are prohibited from even considering private

³⁶Patrick O'Sullivan, *Transport Policy: Geographic, Economic and Planning Aspects* (Totawa, NJ: Barnes & Noble Books, 1980), Ch. 4 "Transport Problems and Policies," pp. 82-107. The author calls nationalization a form of "constitutional intervention" and a "widely anathematized fate worse than death for private enterprise." It has, however, often been seen as a solution "sought eagerly by owners anxious to convert the failing yield of an ailing enterprise into the secure return of government bonds offered in compensation for their ancient property." *Id.*, p. 108.

³⁷Robert Heilbroner & Lester Thurow, *Economics Explained* (New York: Simon & Schuster rev. 1994), Ch. 8 "The Economics of the Public Sector," and "Private v. Public Debts," p. 114.

³⁸S. 468, 105th Cong., 1st Sess., March 18, 1997, p. 1. The full text is found on the Internet at <http://ftp.loc.gov/pub/thomas/c105/s468.rcs.txt>. A section-by-section analysis is also available. One coalition, the Surface Transportation Policy Project has written at Website at <http://www.istea.org>.

³⁹*Congressional Quarterly*, March 8, 1997, p. 583.

⁴⁰*Traffic World*, March 24, 1997, p. 6-7.

⁴¹John D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989).

transportation options. Why argue the "Question of Money"⁴² when we should be focusing on a sustainable NTP? How can we justify our NTP if we fail to debate Mr. Mineta's Crucial Question? Mr. Justice Douglas said, "there is no free speech in the full meaning of the term unless there is freedom to challenge the very postulates on which the existing regime rests."⁴³ Some say that we cannot question public ownership of transportation, and any mention of it is "off limits." Artificial barriers to truth, insulating the "untouchables" of their adherents, precludes our ability to attain our goals, warps the notion of the "public interest" to something short of it, deflects tax dollars for private gain, and traps us behind a politicized Iron Curtain and in a "House Divided" against ourselves. Mr. Justice Douglas reminds us of John Stuart Mill's famous logic:

But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.⁴⁴

Our debate on ISTEA reauthorization, and the NTP, must first answer the Crucial Question because until we decide if we want the public sector or the private sector to handle our transportation needs we are going to suffer the ills of fundamentally inconsistent policy and conflicting goals, and all the adverse financial consequences which follow from them.⁴⁵ If we fail to have a sound foundation upon which to erect our transportation systems, why should our fate not be the same as that of the Soviet Union? A debate which does not address the primary issue, which skirts the Crucial Question, is not what we should expect in America.⁴⁶

To those who say they refuse to discuss the Crucial Question, we should reply in President Jefferson's philosophy, stoutly maintained by generations of Americans over the years that "Truth is the proper and sufficient antagonist to error." On January 16, 1787, he wrote:

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors; and even their errors will tend to keep them to the true principles of the institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people, is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.⁴⁷

⁴²*Traffic World*, May 19, 1997, p. 11.

⁴³William O. Douglas, *The Right of the People* (1958), Ch. 1, "The Philosophy of the First Amendment," p. 9 (hereafter DOUGLAS).

⁴⁴DOUGLAS, p. 14.

⁴⁵See, e.g., *Suburban Trails, Inc. v. New Jersey Transit Corp.*, 620 F.Supp. 1383 (D.N.J. 1985), and also *Westport Taxi Service, Inc. v. Adams*, 571 F.2d 697 (2d Cir. 1978), *cert. denied*, 439 U.S. 829 (1978)(cited by Paul Stephen Dempsey and William E. Thoms, *Law and Economic Regulation in Transportation* (New York: Quorum Books 1986), p. 322-327.

⁴⁶DOUGLAS, p. 9.

⁴⁷DOUGLAS, p. 11.

We debate everything else in the NTP, e.g., how to raise the taxes, where the subsidies will go, what demonstration projects will each Congressman win for his district, but we won't touch Mr. Mineta's Crucial Question. NEXTEA proposes to encourage "private sector participation" in accomplishing ISTEA's goals.⁴⁸ While the world is experiencing a privatization revolution,⁴⁹ we torture ourselves about balancing the federal budget while we encumber ourselves with nationalized transportation.

"Ask Not What You Can Do For Your Country; What Can Your Country Do for You"

As a philosophy of government, ISTEA is diametrically opposite to that contained in President Kennedy's Inaugural Address, Jan. 20, 1961. Our democratic split personality, legislative hypocrisy, akin to subsidizing tobacco farmers while financing lung cancer research, appears to be a primary philosophy underlying ISTEA. We raise a double standard, saying as we deregulate transportation that only market conditions will set prices, while subsidies to public sector carriers continually increase. Each of the currently pending proposals include the unstated presumption that publicly-owned transportation industries are acceptable. These are (1) the Administration's National Economic Crossroads Transportation Efficiency Act (NEXTEA), S.468, H.R.1268; (2) the Streamlined Transportation Efficiency Program for the 21st Century (STEP 21) by Sen. John W. Warner, R-Va., and Rep. Tom DeLay, R-Tex., S.335, H.R.674; (3) the Surface Transportation Authorization and Regulatory Streamlining Act (STARS 2000), by Sen. Max Baucus, D.-Mont., S.532; and (4) the ISTEA Reauthorization Act, by Sen. John H. Chafee, R-R.I., S.586. According to the Federal Highway Administration estimates, the following sums are the average yearly federal subsidies that we will spend under these four proposals, compared with ISTEA⁵⁰:

<u>ISTEA</u>	\$18,221,367,000
<u>NEXTEA</u>	\$20,063,973,000
<u>STEP 21</u>	\$25,516,563,000
<u>STARS 2000</u>	\$25,895,529,000
<u>S.586</u>	\$24,327,204,000

A late entry is "BESTEA," the "Building Efficient Surface Transportation and Equity Act," proposed by House Transportation Infrastructure Committee Chairman Bud Shuster (R-Pa.). Which portions, if any, of these competing bills passes and then emerges unscathed from Conference Committee remains in doubt as this is written. The simultaneous outcry is that America must invest in its infrastructure and balance its budget. If we default to a nationalized industry platform, premised upon tax revenues to fund operations, how can we do both? If nationalized housing did not succeed, why should we expect nationalized transportation to be successful? There are, of course, many proper things that government should do for transportation.⁵¹ But, "what should it leave to others?"

⁴⁸49 U.S.C. §5303; S. 468, p. 81. See, Letter from Transportation Secretary Rodney Slater to Speaker of the House Newt Gingrich, March 12, 1997, transmitting the Administration's bill to the Congress, found at the Internet site for NEXTEA (see footnote 37).

⁴⁹*Wall Street Journal*, Oct. 2, 1995, pp. R1-4. See, generally, José A. Gómez-Ibáñez and John R. Meyer, *Going Private: The International Experience with Transport Privatization* (Wash, D.C.: Brookings Institution, 1993), Ch. 2, "The Privatization-Regulation Cycle" (hereafter GOING PRIVATE).

⁵⁰*Congressional Quarterly*, May 10, 1997, p. 1067.

⁵¹General Accounting Office, Report to Congressional Committees, *Surface Transportation: Research Funding, Federal Role, and Emerging Issues* (Sept. 1996), p. 3. The GAO found that the USDOT provided \$2.9 billion for surface transportation research programs from fiscal 1992 through fiscal 1996, which was about 2% of the Department's

Rickshaws, Lunar Escalator and Bullet Trains

Recent history has shown that planning by Big Brother, with the adhesion of the federal government, and even with the support of a totalitarian dictatorship, is not sustainable over the long run. Only Adam Smith's "Invisible Hand" has emerged as the supreme, although imperfect, platform for successful social structure.⁵² Transportation policy as a vehicle for accomplishing other social goals distorts transportation efficiency, yielding problems which the Invisible Hand would have avoided.⁵³ If transportation is used to achieve our Manifest Destiny, or to promote national security, then you will have trains through buffalo grazing lands and Defense Highways to move MX Missiles. Solving inner city decay, air pollution, unemployment, infrastructure entropy, poverty, discrimination, or tax iniquities are all admirable social goals, but adding the cost of doing so to passenger and freight fares distorts the truth about transportation. There is a difference between what we can do and what we ought to do. If we gave rickshaws to the unemployed we might get some people out of their cars and reduce the welfare rolls, but would that be acceptable in a democracy? If we ignored the cost and built a lunar escalator for sightseers and vacationers, we might please builders, engineers and the tourist industry but what offset would there be in terms of increased tax burdens on small business? If the rider's "co-pay" (farebox contribution) covers only 2% of the fully amortized costs of his trip on the Bullet Train, then 98% must be coming from the rest of us. The rider may think he has transportation freedom, but it is only at the price of enslaving his society.

Political Means Transportation Policy vs. Marketplace

Professor Robin Paul Malloy has suggested a result of such policy. In defense of liberty, human dignity, and freedom, Professor Malloy has set forth a theory of law, economics, and the state which applies as well as to transportation as it does to urban development.⁵⁴ Focusing on social distortions in urban planning when citizens face wrestling with The 800 Pound Gorilla called City Hall, Professor Malloy shows us what can happen whenever public ownership prevails over private ownership of property.

Just as monopolies can be bad for consumers of gasoline or cameras, so too can they be bad for individuals when a coercive power is a person (a parent over a child for instance), a group (the mafia or a collusion of chemical companies), or the state itself. A capitalist system of private ownership is, therefore, an essential element of a free society, because it is the only context in which the necessary balance between public and private can be maintained.⁵⁵

According to Professor Malloy, competing sources of power are essential for the preservation of an environment favorable to creativity, freedom, and spontaneous social order. He identifies marketplace competition as the essential element and the adverse affects upon it made by public ownership.

When the product is government, competition means protecting the individual from the tyranny of the state while providing an institutional means, via government, for protecting the individual from private coercion. But as a competitive construct this model tells us something more. It says that

total budget for surface transportation programs. About \$2.1 billion went to FHWA, which allocated nearly half of the funds for the Intelligent Transportation Systems program's projects. The GAO has also reported to Congress on the benefits of attracting investment funds from the private sector. GAO Report to Congressional Requesters, *State Infrastructure Banks: A Mechanism to Expand Federal Transportation Financing* (Oct. 1996).

⁵²GOING PRIVATE, p. 281. The case studies "provide strong evidence of private sector cost reductions in labor-intensive services."

⁵³"Nationalizing of Railroads: A Mistake America Cannot Afford to Make," *Traffic World*, March 31, 1975, pp. 71-72 (Part I), and June 30, 1975, pp. 72-74 (Part II).

⁵⁴MALLOY, p. 39.

⁵⁵MALLOY, p. 32.

there will be constant conflict between the competitive roles or boundaries of the private versus the public domain. Concepts such as public/private partnerships tend to break down and destroy these boundaries. The breakdown of such boundaries is detrimental because tension can produce positive externalities. As in the commercial marketplace, however, losing the will or means to compete can leave one increasingly at the mercy of other, more powerful players.⁵⁶

He concludes that in the Nation today we have witnessed a loss of both will and means in the private sector because our values have changed or are being changed as we look to political means and the "expansion of the state" to accomplish goals like urban development.⁵⁷ We are witnessing, he concludes, "the inevitable progression toward statism."

Without a commitment to a strong private sector as a counterbalance to the public sector, the power of the state is unlikely to be adequately restrained. Thus, the impersonal and spontaneous social order of the marketplace will give way to the pervasive intrusion of state planning and increasing reliance on the political rather than the economic means for the allocation of rights and resources in our society. Such a process of setting the political means over the economic means results in the elevation of personal status over impersonal market outcomes and leads to a new age of serfdom in which *individual* rights are subservient to the group, institutional, and organizational claims of the state.⁵⁸

ISTEA Goals v. Marketplace

Accepted learning for graduate business students holds that too much expenditure on nonwealth creating activities by government may lower the capacity of a nation to create wealth out of which the former activities are financed.⁵⁹ Thus, our push toward statism and nationalized transportation undermines our ISTEA goal of enabling the United States to "compete in the global economy."⁶⁰ So, if we opt for public sector solutions, i.e., nationalization, we fall into the trap of mortgaging our children's future so that we can have "cheap" transportation now. What is likely to follow from such a policy? Professors Gómez-Ibáñez and Meyer have shown that in both developed and developing countries, a "fairly similar cycle of private and public involvement" was found to occur in stages identified as follows:

1. Entrepreneurial
2. Consolidation
3. Regulation of fares and franchises
4. Decline in profitability
5. Withdrawal of capital and services
6. Public takeover
7. Public subsidies
8. Declining efficiency
9. Dilemma of subsidy cuts, fare increases, and service cuts
10. Privatization

⁵⁶MALLOY at p. 34.

⁵⁷MALLOY, p. 35.

⁵⁸MALLOY, p. 37.

⁵⁹Dunning, *Multinational Enterprises and the Global Economy* (Addison-Wesley Pub., 1993). Professor Dunning concludes, "The fact of the globalization of business and the implications this has for the competitiveness of countries, may then force some societies to reappraise their orders of priorities of resource allocation--particularly between wealth-creating and other activities." *Id.*, at p. 529.

⁶⁰49 U.S.C. §5501(a).

A House Divided Against Itself Cannot Stand

The double standard we have accepted for transportation in the United States has created a "House Divided." We tell the private sector that they must be deregulated; no more government "Nanny" to protect carriers. Let insolvency reap its grisly toll. Bankruptcy Court waits with open doors. *Laissez faire* and *caveat viator*! Concurrently, no subsidy is spared for the public sector carriers. Transportation "entitlements" mean that the taxpayers will give everyone a "free" ride (or nearly so). Can we exist with both? Massive numbers of bankruptcies are acceptable in the private sector, while the taxpayers offer passengers "free" transit, e.g., "Free Light Rail Shuttle." Taxpayers as "investors" in transportation "industry" accept systems that are insolvent from conception. Have we defeated the Soviet Union only to adopt their mistakes?

Where Are We Heading?

Executive Order No. 12893 directs the agencies to carefully examine all of the factors that our infrastructure investments cause in the economy and society. Section 2(a)(5) states:

(5) Analyses should consider not only quantifiable measures of benefits and costs, but also qualitative measures reflecting values that are not readily quantified.

Economists and planners urge decisions based upon concrete results of past operations, or sound predictions of future events based upon scientific analyses. Planned urban development has become the entrenched model form of government. But we need to ask what "values that are not readily quantified" by economists and planners are being ignored as we plunge ahead with statism and nationalization of transportation systems in the United States. We need to re-think our policies in terms of our capitalistic roots. A new unit of measurement designated as the equivalent of our heritage of freedom, which we may call the "Jefferson," ought to be required of our infrastructure investment decision-makers under the President's Executive Order. The significance of this precious "not readily quantified" value is seen in Abraham Lincoln's tale of his first transportation enterprise. The institution of private property is the paramount characteristic of capitalism. This vital fact is the most crucial element of our successful economic philosophy, and has had immeasurable impact on our historical survival as a democracy. Lincoln certainly thought so.

For the rest of his life, Lincoln remembered the day he earned his first dollar. It opened up for him the possibilities of heading out on his own, not just to survive but to succeed.

"You never heard, did you, how I earned my first dollar? I was about eighteen years of age. I was contemplating my new flatboat, when two men came down to the shore in carriages with trunks. "Will you," said one of them, "take us and our trunks out to the steamer?" I was very glad to have the chance of earning something. I supposed that each of them would give me two or three bits. I sculled them out to the steamboat.

Each of them took from his pocket a silver half-dollar, and threw it on the floor of my boat. I could scarcely believe my eyes as I picked up the money. You may think it was a very little thing, but it was a most important incident in my life. I could scarcely believe that I, a poor boy, had earned a dollar in less than a day--that by honest work I had earned a dollar. The world seemed wider and fairer before me. I was a more hopeful and confident being from that time."⁶¹

⁶¹Phillip B. Kundhardt, Jr., et al., *Lincoln: An Illustrated Biography* (New York: Knopf, 1992), p. 43. What did free enterprise transportation teach the President about free government? See, Honore Morrow, *Great Captain* (New York: Wm. Morrow & Co., 1927), pp. 392-94.

Conclusion

How many "flatboatmen," transportation "Horatio Algiers," future free enterprise transportation leaders, and private sector transportation entrepreneurs among the living, and in future generations of Americans, will we deny ourselves by accepting statism and nationalization of our transportation industries? What value should we place upon each one of them? Yes, difficult to quantify, but can we afford to ignore it as we formulate our NTP? How would the President have answered Mr. Mineta's Crucial Question? The American people must insist that our government adhere to both the letter and to the spirit of the President's Executive Order in our NTP for the next century. Let's put the "Jefferson" into our cost-benefit analysis for infrastructure investments at all three levels of our government so that we may achieve the correct answer to the **Crucial Question**.

Mark - Special for you.

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Re: Bullet Train: Tourists' Panacea, Taxpayers' Hell

Dear Editor,

The proposal to build the Bullet Train in California is proof that socialists have taken-over our government. Based on past cost overruns, the price tag on this extreme boondoggle is about \$75-\$80 billion in today's dollars. Paid back interest on these bonds will also burden our children and grandchildren and great-grandchildren will billions more. Annual operating losses will exceed those of all Lite Rails combined. Fares won't cover 1% of operating expenses, estimated at \$1 billion/year. Bond debt will bury us.

Technology exists to build it, but how do we pay the construction costs, and operating costs? It's technologically incompatible with existing railroads, so it will need BART-like right-of-way. Eminent domain power, included in the legislation creating it, ensures that it will plow through Gilroy and Morgan Hill and any other place, regardless of opposition. But it cannot cross the UPRR's tracks because the Class I railroads' eminent domain trumps Bullet Train's eminent domain power, according to UP's top commerce counsel on the West Coast. Tourists will ride it, but enjoy a 99% taxpayer subsidy for rides that will cost more than those on the Concorde Supersonic Jets. Local small business owners will pick-up the tab, maybe getting 10% back from tourist dollars if we're lucky.

In 1970 Congressmen stood up in Congress and proclaimed that Amtrak would be "self-sufficient in three years." Yeh. By 9/11/01 taxpayers had thrown about \$30 billion in subsidies down that black hole, but did we have adequate airport security?

In 1863 General Grenville Dodge, who was later UPRR's top civil engineer, and who discovered the Sherman Pass over the Continental Divide, was summoned to the White House. He later said that he told the President that the government should own and operate the transcontinental railroad. Lincoln, who as a young member of the Illinois Legislature had seen government owned railroads in Eastern and Midwestern States go bust and shutdown operations in the 1830's and 1840's, said no. He said that private enterprise must do it, although the government would assist with

When will we ever learn?

development incentives (my words, not his). They did it. And what did taxpayers receive in the deal? They got about \$460 million (measured in 1940 dollars) more than the value of the land granted to the railroad corporations because of Section 22 in the original Interstate Commerce Act (lower freight rates for government shipments).

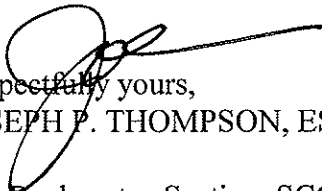
A hundred years ago the Progressive Movement, led by William Jennings Bryan, sought nationalization of the railroads and other industries, but their passion was rejected by voters.

When the railroads were nationalized in 1917 during the Administration of Woodrow Wilson, government genius so botched-up shipping that rail traffic came to a standstill. That experiment failed, just as Lincoln predicted it would. In the Transportation Act of 1920 the railroads were de-nationalized, and came to be the envy of the world's nations today; the backbone of our nation's commerce.

Instead of making taxpayers pay for Bullet Train, like we pay for County Transit, Caltrain, Amtrak, Lite Rail, etc., etc., while motorists are paying 100% of their own transport costs, seeing our politicians rewarding transit wastefulness, why not use the unlimited power of capitalism? Have you been on I-5 lately to see the uninterrupted 24-7 tonnage flowing North-South in California? I appeared before the Bullet Train commission five times over the last decade and told them that if they put enough UPS, Fedex and Postal Service tonnage on their trains, then they would not need to ask the taxpayers for a dime. Did they listen?

Like Amtrak's promoters, their pie-in-the-sky predictions show that they did not listen, nor did they learn from history, either United States or world history in the last century and one-half. So, hold on for the ride, and warn your children and grandchildren, our leaders will strap taxpayers to the rocket to Hell. We'll be paying unimaginable sums to attempt what Lenin, Trotsky, Stalin and the USSR failed to achieve, despite all their promises to their citizens that socialism could bring utopia. If they fund it with gas taxes, be prepared to see \$10/gallon for gas at the pumps. They'll tax motorists out of their cars, leaving them to ride our Trojan Horses, and bike or walk the rest of the way.

Caveat Viator!


Respectfully yours,
JOSEPH P. THOMPSON, ESQ.

Member, Executive Committee, Debtor-Creditor-Bankruptcy Section, SCCBA
Member, Legislation Committee, Transportation Lawyers Assn.
Member, Association for Transportation Law, Logistics & Policy
Candidate, American Society of Transportation & Logistics
Winner, AST&L's Best Research Paper Award 1997
Past-President, Gilroy-Morgan Hill Bar Assn.
Post-Doctoral Student, Transportation Law & Policy

When will we ever learn?



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Date: Fri, 24 Aug 2007 10:45:26 -0700 (PDT)
From: "Joseph Patrick Thompson" <translaw@pacbell.net>
Subject: Mark, Special to Dispatch--Could be Guest Opinion
To: editor@garlic.com, editor@gilroydispatch.com

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In 1970 Congressmen stood up in Congress and proclaimed that Amtrak would be "self-sufficient in three years." Yeh. By 9/11/01 taxpayers had thrown about \$30 billion in subsidies down that black hole, but did we have adequate airport security?

We faced this issue in the past. In 1863 General Granville Dodge, who was later UPRR's top civil engineer, and who discovered the Sherman Pass over the Continental Divide, was summoned to the White House. He later said that he told the President that the government should own and operate the transcontinental railroad. Lincoln, who as a young member of the Illinois Legislature had seen government owned railroads in Eastern and Midwestern States go bust and shutdown operations in the 1830's and 1840's, said no. He said that private enterprise must do it, although the government would assist with development incentives (my words, not his).

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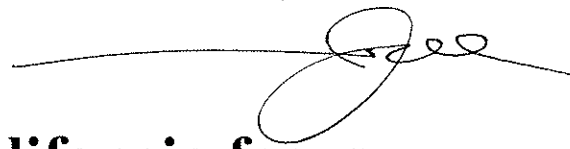
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Post-Doctoral Student, Transportation Law & Policy

Wednesday, June 14, 2006

*Please Publish
this* 

1. **Taking taxpayers for a ride california focus**

Proposed state high-speed rail system would cost too much to do too little

There has been considerable discussion about the proposed California High Speed Rail project. California taxpayers are being subjected to grandiose claims about reduced traffic congestion and cost-effective alternatives to flying and driving.

The HSR system, which would connect Los Angeles, San Francisco, San Diego, Sacramento and areas in between, would require as a down payment a \$10 billion bond issue that voters may consider as soon as November. The California High Speed Rail Authority says the system could cost much more – \$37 billion. Reality is more like \$75 billion.

Luckily, the Assembly last month passed a bill that would delay the bond election until 2008. That bill is now in the Senate Appropriations Committee, where there is no clear indication whether it will come to a vote anytime soon. However, there is evidence the Assembly's caution is justified, and the Senate should follow its lead.

First, the HSR system is likely to cost much more than advertised. Cost projections for large transportation projects are notoriously inaccurate. Boston's two-decade "Big Dig" racked up three times its projected cost, even after accounting for inflation. Across the country, transit megaprojects have escalated in cost after approval; these are not isolated cases.

What's more, it appears these overruns are not accidental. Research by Bengt Flyvbjerg of the University of Aalborg (Denmark) published in the Journal of the American Planning Association demonstrates these projects routinely surpass estimated costs due to "strategic misrepresentation." Planners and proponents underestimate costs in hopes of obtaining project approvals that would otherwise be impossible.

As a Los Angeles County transportation commissioner, I witnessed costs escalate for the Blue Line light rail from Los Angeles to Long Beach eventually exceeding three times original projections (inflation-adjusted). At no point did anyone seriously question the increases, because the taxpayers had already committed to the project. There was simply no incentive to keep costs down. Why should we expect the HSR project to be any different?

Flyvbjerg and others also have found that ridership estimates tend to be overstated. The Los Angeles Red Line subway even today carries less than one-half the ridership that was projected when we approved it.

Ridership is important because the California high-speed rail system is advertised as not needing its operations subsidized by taxpayers. But this claim is likely based on an overestimation of the ridership and an underestimation of the operating costs. Amtrak's high-speed Acela service between Washington, D.C., and New York City carries little more than one-tenth the passengers

that proponents promise for the California system, despite serving a larger market. So it is likely taxpayers will need to keep their checkbooks open indefinitely to subsidize HSR operation.

All this would be irrelevant if we needed such a system. The California HSR has been touted as a strategy for reducing highway congestion. In fact, projections indicate that traffic congestion along the rail corridors will still increase 26 percent by 2020, even with the high-speed trains. Without them the increase by 2020 would be 31 percent.

Claims of reduced air traffic congestion are similarly flawed. Most air travel between the San Francisco Bay Area and Southern California already avoids the busy San Francisco International and Los Angeles International airports, and their share of travel is declining. Planners delude themselves into believing HSR will take away half of air traffic volume. But last year Amtrak said its New York-to-Washington high-speed service lost ridership to stronger airline competition. Planners assume airlines will stand idly by as their customers jump on the train. In fact, airlines will compete, and compete hard.

Much has been made of HSR's purported cost-effectiveness, with claims that highway improvements would cost more than twice as much as the rail project. But the highway alternative would produce four times the congestion relief, making it twice as cost-effective, even without the inevitable cost escalations for high-speed rail.

Thus, for California, the question is not whether high-speed rail would be nice – it would be. The fundamental question is whether it is worth the tens of billions it could cost. At this point, there is every reason to believe this project would be, quite simply, a waste of money.